Supreme Court, U.S.
FILED
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CLERK

No. 95-440

In The

Supreme Court of the United States

October Term, 1995

RICHARD HOPEWELL,

Petitioner,

v.

WILLIAM DUNKER, JANET BREKKE, JOHN DOE, JANE DOE, JOHN ROE, JANE ROE, MIKE MOE, MARY MOE, individually and in their capacities as employees of the City of Sioux Falls, CITY OF SIOUX FALLS, MIDCONTINENT BROADCASTING CORPORATION dba KELOLAND NEWS, STEVE HEMMINGSEN, JESSICA ARMSTRONG and VARIOUS OTHER UNIDENTIFIED PERSONS, individually and in their capacities as employees and agents of Midcontinent Broadcasting Corporation,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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32 pp

QUESTIONS PRESENTED

In 1990, when Petitioner was running for a judicial office, the local media broadcasted information about untoward incidents occurring in 1978 which involved Petitioner. Petitioner brought suit in state court for libel. Petitioner then brought suit in federal court alleging deprivation of his constitutional rights.

1. Did the appellate court err in affirming the district court's granting of summary judgment in that the dissemination of this information:

   a. Did not violate the Petitioner's constitutional right of equal protection;

   b. Did not violate Petitioner's constitutional right of due process;

   c. Did not violate Petitioner's fundamental right to privacy.

2. Did the appellate court err in affirming the district court's decision to deny Petitioner's motion for leave to file a third amended complaint.

3. Did the appellate court err in affirming the district court's decision to deny Petitioner's motion for continuance under Federal Rule of Civil Procedure 56(f).

PARTIES

The parties to the proceedings below in the Eighth Circuit Court of Appeals were the same parties as in the original action in the United States District Court of South Dakota, Southern Division.

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OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit is unpublished. It is reprinted in Appendix A to this brief, beginning at page 1a. The Order Fixing Hearing Date, the Summary Judgment for Defendants, and Order of Dismissal entered by the United States District Court of South Dakota, Southern Division, are also unpublished and are reprinted in Appendices B, C and D to this brief. (*See* App. B at 6a; App. C at 8a; App. D at 10a.)

JURISDICTION

This action was initiated by the Petitioner, Richard Hopewell, by complaint in the United States District Court of South Dakota, Southern Division, on October 22, 1993, which invoked the jurisdiction of the federal court under a number of federal statutes, including 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. § 1343. The action was dismissed by the district court on April 18, 1994, following the entry of summary judgment for the Defendants. Petitioner filed a notice of appeal on May 18, 1994.

The opinion and order of the Court of Appeals, of which Petitioner now seeks a Writ of Certiorari, was issued on June 5, 1995.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. XIV, § 1
42 U.S.C. § 1983
Fed. R. Civ. P. 15(a)
Fed. R. Civ. P. 56(f)
S.D. Local Rule 15.1

STATEMENT OF THE CASE

On May 28, 1978, Sioux Falls Police Officer Glenn Rivers was dispatched to the residence of Roger Ensenbach. Upon arrival, Officer Rivers was advised that Petitioner Hopewell had accosted Mrs. Ensenbach and then fled the premises in the nude. Roger Ensenbach recounted to Officer Rivers that Petitioner Hopewell had come over to the Ensenbach residence and, while Mr. Ensenbach was talking on the phone, Petitioner Hopewell took all of his clothes off and went into the master bedroom. Mrs. Ensenbach was clothed in a nightgown and in bed when Hopewell entered the bedroom. Hopewell "then tried to yank her [Mrs. Ensenbach] out of bed and tried to take her nightgown off and he was completely naked when he was doing this and Mrs. Ensenbach believes that he had the intent of raping her at the time." Mr. Ensenbach responded to his wife's cries for help and an altercation ensued. Hopewell left the Ensenbach residence in his car and still in the nude. A short while later, Police Officer William Dunker received a call over his radio to go to Alick Drug in Sioux Falls, where there was a report of a nude man inside the store. Upon arrival, Officer Dunker found Petitioner Hopewell in the store totally nude and babbling incoherently. Hopewell then

lunged for Dunker's gun, whereupon Dunker subdued Hopewell, cuffed him, and placed him under arrest. Hopewell was transported by Officers Dunker and Keenan, during which time Hopewell stated he was the King of England and made other nonsensical comments. According to Officer Dunker, Hopewell appeared to be detached from reality. He was lodged under an attempted rape charge based upon Mrs. Ensenbach's report that he attempted to pull her out of bed and tear her nightgown off with the intent of raping her. An application was made by Officer Rivers for emergency commitment to a mental institution based upon the preceding events. Hopewell had been arrested for attempted rape and the case was exceptionally cleared, meaning that after it was submitted to the State's Attorney's office, the criminal charge was not pursued. Arresting Officer Rivers was under the assumption that the criminal charges were dropped on the condition that Hopewell receive evaluation and treatment for mental illness.

In 1990, Petitioner Hopewell ran for circuit judgeship against incumbent The Honorable Gene Paul Kean. In the course of the political campaign, Petitioner Hopewell was interviewed by a newspaper reporter for the Sioux Falls Argus Leader. In the interview, Petitioner Hopewell admitted that he was found nude in a grocery store in 1978, and further explained in the newspaper article:

> It should be noted, however, that it occurred as a result of an hallucinogenic experience induced by my having been surreptitiously drugged with what I'm told is called PCP by a secret agent of a political adversary who was noted for his dirty tricks and unethical behavior, and is

> now very probably allied with Gene Paul Kean and who may well have advanced this information to you for purposes of my campaign embarrassment.

Three days *after* the published account of Hopewell's admission that he was found nude in a drug store, Respondent Midcontinent Broadcasting Corporation, d/b/a Keloland News, broadcast that Hopewell had been arrested for attempted rape in 1978. Respondent Jessica Armstrong obtained the information for the story from two unidentified sources having access to the arrest and case reports of the Sioux Falls Police Department as well as confirming the information with Roger Ensenbach, the husband of the victim. The basis for the news story that Petitioner Hopewell allegedly greeted parishioners at St. Joseph's Cathedral in the nude likewise came from confidential sources. Officer Rivers explained that the original information concerning the St. Joseph Cathedral incident may at one time have existed on a police log indicating that a complaint had come from the St. Joseph's Cathedral area.

Petitioner Hopewell subsequently brought a defamation suit in state court against Respondents Midcontinent Broadcasting Corporation, d/b/a Keloland News, and Keloland News reporters Steve Hemmingsen and Jessica Armstrong for broadcasting during his campaign the story concerning the attempted rape arrest in 1978. In that proceeding, Respondent Dunker signed an affidavit recounting the arrest of Hopewell at Alick Drug. Subsequently, Dunker was deposed in the state court proceeding concerning the affidavit as well as the events of May 28, 1978, leading to Hopewell's arrest.

Petitioner instituted a § 1983 action in October 1993 by service of a summons and complaint naming, among others, Lieutenant William Dunker and City Attorney Janet Brekke. Hopewell amended his complaint on December 2, 1993, adding the City of Sioux Falls as a named defendant. No summons was served upon the City of Sioux Falls perfecting service under the amended complaint.

On January 18, 1994, Petitioner Hopewell filed a second amended complaint, and on February 7, 1994, Hopewell moved the court for leave to file his second and third amended complaint. By order dated February 24, 1994, the federal district court granted Hopewell leave to file his second amended complaint but denied him leave to file his third amended complaint. In essence, Petitioner Hopewell alleged that Respondents Dunker and Brekke violated his constitutional rights by releasing criminal investigation information in the state court proceeding and that unnamed City employees violated his constitutional rights by releasing the same information to Jessica Armstrong of Keloland News during Petitioner's political campaign.

All of the Respondents filed motions to dismiss or in the alternative motions for summary judgment, which were set for hearing by the court for April 25, 1994. Petitioner Hopewell moved for a continuance of the proceedings, which was denied by the court by order dated April 18, 1994. Following hearing, the court granted Respondents' motions for summary judgment on all of the claims, dismissing Petitioner's federal claims with prejudice and dismissing Petitioner's pendant state

claims without prejudice. This order was entered on April 18, 1994.

On May 18, 1994, Petitioner Hopewell appealed the decision of the South Dakota District Court to the United States Court of Appeals for the Eighth Circuit. Following briefing, the Eighth Circuit affirmed the South Dakota District Court's decision and entered judgment in accordance with the opinion of the court on June 5, 1995.

On September 9, 1995, Petitioner Hopewell made application to the Supreme Court of the United States (October 1995 term) for an extension of time in which to file his Petition for Writ of Certiorari. A resistance to Petitioner's motion for enlargement of time was filed on behalf of Respondents Midcontinent Broadcasting, Steve Hemmingsen and Jessica Armstrong on September 12, 1995. On September 13, 1995, this Court allowed Petitioner to submit his Petition for Writ of Certiorari, dated September 5, 1995.

REASONS FOR DENYING PETITION

I. THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT WHERE THE UNRESOLVED ISSUES IN THE CASE WERE PRIMARILY LEGAL RATHER THAN FACTUAL.

The Eighth Circuit properly applied the standard of de novo review in reviewing the district court's grant of summary judgment. The Eighth Circuit examining 42 U.S.C. § 1983 concluded that this section of the Code merely provides "a method for vindicating federal rights elsewhere conferred," *Albright v. Oliver*, 114 S. Ct. 807,

811 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n. 3, 99 S. Ct. 2689 (1979)). Summary judgment is particularly appropriate when such issues are legal rather than factual. *Crain v. Board of Police Comm'rs*, 920 F.2d 1402, 1405-06 (8th Cir. 1990).

II. THE EIGHTH CIRCUIT FOLLOWED THIS COURT'S DECISION IN DETERMINING THAT PETITIONER'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED IN THIS ACTION.

The Petition for Writ of Certiorari submitted by Petitioner Hopewell sets forth almost verbatim the same argument that he proposed in his Appellant's Brief to the Eighth Circuit. Petitioner fails to argue any error in the decision of the Eighth Circuit Court of Appeals.

The Eighth Circuit addressed Petitioner's alleged constitutional violations in this case: In addressing the equal protection claim, the Eighth Circuit held that this claim failed in that the Petitioner did not identify himself as a suspect classification nor did he show that a fundamental right was infringed upon in this case. Moreover, Petitioner failed to meet equal protection analysis in that he could not show that he was treated differently than others similarly situated. *Abdullah v. Gunter*, 949 F.2d 1032, 1037 (8th Cir. 1991).

As to the Petitioner's substantive due process claim, Petitioner failed to cite any statutes which provide for him a liberty interest in confidentiality of his arrest records. *Bagley v. Rogerson*, 5 F.3d 325, 328 (8th Cir. 1993). Therefore, there are no due process protections to which

he is entitled. Additionally, Petitioner has failed to establish that a fundamental privacy right was somehow violated when his arrest records were disclosed. *Scheetz v. The Morning Call, Inc.*, 946 F.2d 202, 206 (3d Cir. 1991).

III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING A CONTINUANCE UNDER FEDERAL RULE OF CIVIL PROCEDURE 56(f).

The Eighth Circuit, citing *Humphreys v. Roach Biomedical Lab., Inc.*, 990 F.2d 1078, 1081 (8th Cir. 1993), and *United States Through Small Business Admin. v. Light*, 766 F.2d 394, 397-98 (8th Cir. 1985), held that Petitioner Hopewell, in requesting a continuance, failed to indicate the nature of the additional discovery he sought or how it would help him in arguing against the motion for summary judgment. Therefore, the district court was within its discretion in denying Petitioner's motion for a continuance.

In addition, on February 24, 1994, prior to Petitioner's request for a continuance, the court set forth deadlines for briefing the motion for summary judgment. The court granted all parties ample time to serve their briefs and opposing materials. (*See* Order Fixing Hr'g Date, App. B at 7a.) The court was also within its discretion in setting these deadlines and denying a continuance based on its previous order.

IV. PETITIONER HAS FAILED TO SHOW THAT THE DISTRICT COURT IN ANY WAY ABUSED ITS DISCRETION IN DENYING HIS MOTION FOR LEAVE TO FILE HIS AMENDED COMPLAINT.

While the Rules of Civil Procedure do allow for a party to amend his or her complaint, the Rules also provide that the court can take into consideration successive amendments to plaintiff's complaint.

The district court in this case did allow Petitioner to file an amended complaint. The court was well within its bounds of discretion in denying Petitioner's petition to file a third amended complaint. Not only did Petitioner fail to follow the Local Rule by not attaching the third amended complaint to his motion, but his proposed amended complaint sought only to amplify theories expounded in his original amended complaint. The court was well within its discretion in denying this motion. *Clayton v. White Hall Sch. Dist.*, 778 F.2d 457, 460 (8th Cir. 1985).

CONCLUSION

Petitioner Hopewell has asked this Court to review the exact same issues that were brought for appeal at the Eighth Circuit level. The Eighth Circuit held that Hopewell had failed to cross the threshold of a § 1983 action and failed to demonstrate a constitutional deprivation to premise his § 1983 action. There was no issue of material fact in the proceedings below, and thus Respondents were entitled to summary judgment as a matter of law. The Eighth Circuit agreed by affirming the district court's

decision. Respondents respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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APPENDICES

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 94-2286

Richard Hopewell, Appellant, v. William Dunker, Individually and in his capacity as an employee of the City of Sioux Falls, South Dakota; Janet Brekke, Individually and in her capacity as an employee of the City of Sioux Falls, South Dakota; Midcontinent Broadcasting Corporation, doing business as Keloland News; Steve Hemmingsen, Individually and in his capacity as an employee or agent of Midcontinent Broadcasting Corporation; Jessica Armstrong, Individually and in her capacity as an employee of Midcontinent Broadcasting Corporation; City of Sioux Falls, South Dakota, Appellees.	*	Appeal from the United States District Court for the District of South Dakota. [UNPUBLISHED]

Submitted: May 23, 1995

Filed: June 5, 1995

Before WOLLMAN, Circuit Judge, HEANEY, Senior Circuit Judge, and BEAM, Circuit Judge.

PER CURIAM.

Richard Hopewell appeals from the district court's[1] grant of summary judgment to all defendants in his 42 U.S.C. § 1983 action. We affirm.

In the fall of 1990, Hopewell, an attorney, was a candidate for state court judge in Sioux Falls, South Dakota. On October 26, several weeks before election day, Jessica Armstrong and Steve Hemmingsen, television news reporters for KELO1and News, owned by Midcontinent Broadcasting Corporation (the "media defendants"), aired a story about Hopewell, disclosing the details of Hopewell's arrest on May 28, 1978, on charges that were eventually dropped. Hopewell lost the election. Hopewell brought a state court action for libel against the media defendants, which ended in summary judgment for these defendants.

Hopewell then brought the present action, alleging that the media defendants conspired with unidentified City of Sioux Falls employees to disclose his arrest record and that the disclosure denied him equal protection. Hopewell also alleged that defendants Sioux Falls police

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[1] The Honorable John B. Jones, Senior United States District Judge for the District of South Dakota.

officer William Dunker, city attorney Janet Brekke, and Midcontinent Broadcasting violated his equal protection rights by disclosing the same information in Hopewell's state libel action; and that both disclosures violated his substantive and procedural due process rights. The district court granted summary judgment, finding no constitutional right of Hopewell's implicated.

We review de novo the district court's grant of summary judgment; where the unresolved issues are primarily legal rather than factual, summary judgment is particularly appropriate. *See Crain v. Board of Police Comm'rs*, 920 F.2d 1402, 1405-06 (8th Cir. 1990). "Section 1983 'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.' " *Albright v. Oliver*, 114 S. Ct. 807, 811 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144, n.3 (1979)).

Hopewell's equal protection claims fail. First, he did not identify a suspect classification or an infringed fundamental right. *See MSM Farms, Inc. v. Spire*, 927 F.2d 330, 332 (8th Cir. 1991) (where no suspect class or fundamental right involved, classification is presumed constitutional and subject to only rational basis scrutiny). Second, Hopewell does not explain how he was treated differently from others similarly situated. *See Abdullah v. Gunter*, 949 F.2d 1032, 1037 (8th Cir. 1991), *cert. denied*, 112 S. Ct. 1995 (1992) (equal protection plaintiff must show he was similarly situated to others, yet treated differently).

As to Hopewell's substantive due process claims, the disclosure of arrest records, such as those disclosed in the

present case, ordinarily does not infringe upon any fundamental right to privacy. *See Paul v. Davis*, 424 U.S. 693, 713 (1976) (declining to establish fundamental privacy right in one's arrest records); *Scheetz v. The Morning Call, Inc.*, 946 F.2d 202, 206 (3rd Cir. 1991). We also find no basis for Hopewell's contention that the South Dakota statutes he cites gave him a liberty interest in the confidentiality of his arrest records, entitled to procedural due process protections. *See Bagley v. Rogerson*, 5 F.3d 325, 328 (8th Cir. 1993).

The district court did not abuse its discretion in denying Hopewell's Federal Rule of Civil Procedure 56(f) motion for a continuance, as he did not indicate the nature of the discovery he sought or how it would help him. *See Humphreys v. Roche Biomedical Lab, Inc.*, 990 F.2d 1978, 1081 (8th Cir. 1993); *United States Through Small Business Admin. v. Light*, 766 F.2d 394, 397-98 (8th Cir. 1985) (per curiam). Finally, as Hopewell failed to submit his proposed amended complaint with his motion to amend, the district court did not abuse its discretion in denying Hopewell's motion for leave to file his third amended complaint. *See Clayton v. White Hall School Dist.*, 778 F.2d 457, 460 (8th Cir. 1985).

The judgment is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 94-2286

Richard Hopewell,

Appellant,

v.

William Dunker, Individually and in his capacity as an employee of the City of Sioux Falls, South Dakota; Janet Brekke, Individually and in her capacity as an employee of the City of Sioux Falls, South Dakota; Midcontinent Broadcasting Corporation, doing business as Keloland News; Steve Hemmingsen, Individually and in his capacity as an employee or agent of Midcontinent Broadcasting Corporation; Jessica Armstrong, Individually and in her capacity as an employee of Midcontinent Broadcasting Corporation; City of Sioux Falls, South Dakota,

Appellees.

CIV 93-4175

Appeal from the United States District Court for the District of South Dakota.

JUDGMENT

(Filed Jul. 5, 1995)

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

June 5, 1995

A true copy. /s/ Michael E. Gans MANDATE ISSUE

ATTEST: JUN 28 1995

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

RICHARD HOPEWELL, Plaintiff, -vs- WILLIAM DUNKER, Individually and in his capacity as an employee of the City of Sioux Falls, South Dakota; JANET BREKKE, Individually and in her capacity as an employee of the City of Sioux Falls, South Dakota; MIDCONTINENT BROADCASTING CORPORATION, d/b/a KELOLAND NEWS; STEVE HEMMINGSEN, Individually and in his capacity as an employee or agent of Midcontinent Broadcasting Corporation; JESSICA ARMSTRONG, Individually and in her capacity as an employee or agent of Midcontinent Broadcasting Corporation; and CITY OF SIOUX FALLS, SOUTH DAKOTA, Defendants.	*	CIV 93-4175 ORDER FIXING HEARING DATE (Filed Feb. 24, 1994)

After examination of the record, it appears that plaintiff's Motion of Leave to File Second and Third Amended Complaints, Doc. 20, should be granted as to the Second Amended Complaint and should be denied as to the Third Amended Complaint because of plaintiff's failure to comply with District of South Dakota Local Rule 15.1 by failing to file a copy of the proposed amended pleadings with the motion.

It further appears that a deadline for file and serving motions should be established and a hearing date on all motions should be fixed.

Now, therefore,

IT IS ORDERED:

(1) That plaintiff's Motion for Leave to File Second and Third Amended Complaints, Doc. 20, is granted as to the Second Amended Complaint and is denied as to the Third Amended Complaint.

(2) That all pending motions to dismiss will be treated as motions for summary judgment.

(3) That if any party desires to file and serve additional motions relating to the second amended complaint, such motions and supporting briefs shall be filed and served on or before March 15, 1994; and opposing materials and briefs shall be filed and served on or before April 5, 1994; and reply briefs may be served and filed on or before April 15, 1994.

(4) That if any party desires to file and serve any further briefs or materials relating to motions now pending, such further briefs and materials may be served on or before March 15, 1994, with opposing materials and

briefs to be filed and served on or before April 5, 1994, and with reply briefs to be served and filed on or before April 15, 1994.

(5) That all motions now pending or hereafter filed within the deadlines established herein will be heard on Monday, April 18, 1994 at 2:00 P.M.

Dated this 24th day of February, 1994.

BY THE COURT:

/s/ John B. Jones
Chief Judge

ATTEST:

WILLIAM F. CLAYTON, CLERK

BY: /s/ DeAnn Martin
DEPUTY

(SEAL)

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

RICHARD HOPEWELL, Plaintiff, -vs- WILLIAM DUNKER, Individually and in his capacity as an employee of the City of Sioux Falls, South Dakota; JANET BREKKE, Individually and in her capacity as an employee of the City of Sioux Falls, South Dakota; MIDCONTINENT BROADCASTING CORPORATION, d/b/a KELOLAND NEWS; STEVE HEMMINGSEN, Individually and in his capacity as an employee or agent of Midcontinent Broadcasting Corporation; JESSICA ARMSTRONG, Individually and in her capacity as an employee or agent of Midcontinent Broadcasting Corporation; and CITY OF SIOUX FALLS, SOUTH DAKOTA, Defendants.	CIV 93-4175 SUMMARY JUDGMENT FOR DEFENDANTS (Filed April 19, 1994)

The Court having entered its Order in this matter and after consideration of the same, it is hereby

ORDERED, ADJUDGED AND DECREED that Defendants' William Dunker and Janet Brekke Motions for Summary Judgment be and the same are hereby granted and Plaintiff Richard Hopewell's claims against said defendants be and the same are hereby dismissed, and it is further

ORDERED, ADJUDGED AND DECREED that Defendants' Midcontinent Broadcasting Corporation d/b/a/ Keloland News, Steve Hemmingsen and Jessica Armstrong Motions for Summary Judgment be and the same are hereby granted and Plaintiff Richard Hopewell's claims against said defendants be and the same are hereby dismissed, and it is further

ORDERED, ADJUDGED AND DECREED that Judgment be and the same is hereby entered dismissing all of Plaintiff Richard Hopewell's federal claims against all defendants with prejudice, and it is further

ORDERED, ADJUDGED AND DECREED that Judgment be and the same is hereby entered dismissing all of Plaintiff Richard Hopewell's pendent state claims without prejudice, and it is further

ORDERED, ADJUDGED AND DECREED that defendants may recover their costs of this action in the amount of _____ to be hereinafter inserted by the Clerk of this Court, and it is further

ORDERED, ADJUDGED AND DECREED that this case be and the same is hereby dismissed.

Dated this 19th day of April, 1994.

/s/ William F. Clayton
WILLIAM F. CLAYTON,
Clerk
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

RICHARD HOPEWELL, Plaintiff, -vs- WILLIAM DUNKER, Individually and in his capacity as an employee of the City of Sioux Falls, South Dakota; JANET BREKKE, Individually and in her capacity as an employee of the City of Sioux Falls, South Dakota; MIDCONTINENT BROADCASTING CORPORATION, d/b/a KELOLAND NEWS; STEVE HEMMINGSEN, Individually and in his capacity as an employee or agent of Midcontinent Broadcasting Corporation; JESSICA ARMSTRONG, Individually and in her capacity as an employee or agent of Midcontinent Broadcasting Corporation; and CITY OF SIOUX FALLS, SOUTH DAKOTA, Defendants.	*	CIV 93-4175 ORDER OF DISMISSAL (Filed Apr. 18, 1994)

All pending motions came on for hearing on April 18, 1994, with the plaintiff appearing by Wendy Allison Nora, and with defendant Dunker et al. appearing by William P. Fuller and with defendant Midcontinent Corp. et al. appearing by Timothy M. Gebhart, and

After arguments of counsel and upon the record,

IT IS ORDERED:

(1) That the plaintiff's Motion for Continuance of Proceedings on Motions for Summary Judgment, Doc. 34, is denied.

(2) That Dunker et al.'s Motion to Dismiss as to the City of Sioux Falls, Docs. 5, 12, 18, and 23, will be treated as a motion for summary judgment and is granted and the plaintiff's claims against said defendants are dismissed.

(3) That Midcontinent Corp. et al's Motion to Dismiss Second Amended Complaint or Alternatively for Summary Judgment, Docs. 3, 14, 19, and 25, will be treated as a motion for summary judgment and is granted and the plaintiff's claims against said defendants are dismissed.

(4) That the Clerk of Courts shall enter judgment dismissing all of plaintiff's federal claims against all defendants with prejudice, and shall enter judgment dismissing plaintiff's pendent state claims without prejudice.

(5) That Defendants' Motion for Sanctions, Doc. 27, is denied.

Dated this 18th day of April, 1994.

BY THE COURT:

/s/ John B. Jones
Chief Judge

ATTEST:

WILLIAM F. CLAYTON, CLERK

BY: /s/ Linda M. Ziegler
DEPUTY

(SEAL)